

**VIRGINIA DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION
AND SUBSTANCE ABUSE SERVICES**

PRE-NOIRA SUBMISSION

Virginia Register Number: 12 VAC 35-110-10 et. seq.

Regulation Title: *Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.*
(REPEAL)

Summary and Purpose: The department proposes to repeal this regulation, which assures that persons who are patients in a hospital operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services are provided the protection of their legal rights and receive care consistent with basic human dignity insofar as it is within the reasonable capabilities and limitations of the licensee and is consistent with sound therapeutic treatment. This regulation serves three (3) major functions:

To monitor hospital program compliance with the rules and regulations and other applicable laws relative to client rights through a review of program policies, procedures, and practices.

To prevent the occurrence of rights violations, provide consultation and technical assistance to hospitals, and to provide ongoing training relative to client rights.

To respond to complaints alleging rights violations, investigate and seek to resolve complaints, and to assist clients with appeals.

This regulation will be superseded by 12 VAC 35-115-10 et seq., *Rules and Regulations to Assure the Rights of Clients in Facilities and Programs Operated, Funded or Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services*, which updates and consolidates the department's three human rights regulations.

a. Source of agency's legal authority and reason to promulgate (repeal) regulation

Legal authority: This regulation was promulgated under §37.1-84 of the *Code of Virginia (1950)*, as amended and applies to persons receiving services hospitals and training centers operated by the department.

Reason to repeal regulation: The regulation has not been revised since it was promulgated in 1980. When this regulation was reviewed in 1996, the State Mental Health, Mental Retardation and Substance Abuse Services Board recommended revising and consolidating the department's three human rights regulations (12 VAC 35-120-10 et. seq., *Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental*

Preliminary Determination

Retardation and Substance Abuse Services; 12 VAC 35-110-10 et. seq., Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services; and 12 VAC 35-130-10 et. seq., Rules and Regulations to Assure the Rights of Clients in Community Programs). Revision and consolidation are necessary to:

reflect changes in statutory provisions,

address consumer and family concerns,

establish a single standard for community and facility, public and private programs, and

reflect current practices and terminology.

b. Source and scope of the mandate.

This regulation, 12 VAC 35-110-10 et seq. was promulgated pursuant to §37.1-84 of the *Code of Virginia (1950)*, as amended and applies to persons receiving services in hospitals and training centers operated by the department. The statute delineates the rights of patients and residents that shall be addressed in the regulations promulgated by the State Mental Health, Mental Retardation and Substance Abuse Services Board.

c. Why this regulation is essential to protect the health, safety, and welfare of citizens or for the efficient and economical performance of government.

This regulation is essential to assure the provision of quality services in a manner that promotes respect for basic human dignity.

d. Alternatives considered.

Alternative 1: Repeal. Repeal of this regulation is necessary to consolidate the regulation with the department's other human rights regulations. Consolidation of the three human rights regulations will:

establish a single set of standards that protect the rights of persons with mental disabilities who receive treatment in public and private, inpatient and outpatient programs;

reduce the burden of multiple regulations on public and private providers of inpatient and outpatient services; and

reduce the confusion for consumers and families, which often results when an individual moves from one type of program to another (e.g., inpatient to community), each with a separate set of human rights regulations.

Alternative 2: No change to current human rights regulations. The department's three human rights regulations provide some assurance that the legal and human rights of patients and residents are protected but three regulations create confusion for consumers and families and they create a burden for public and private providers who may be required to adhere to multiple regulations.

e. What impact does the regulation have on families?

This regulation provides some level of assurance to families that their loved ones are receiving quality care in a manner that promotes the respect and dignity of the individual receiving treatment. However, this is one of three human rights regulations, each of which establishes human rights standards and procedures for a different treatment setting. Repeal of this regulation and promulgation of a single, consolidated human rights regulation will reduce the confusion that families often experience when a family member moves from one type of program to another (e.g., inpatient to community), each with a separate set of human rights regulations.

Attachment: Purpose of Proposed Action

This regulation, which protects the legal and human rights of all clients who receive treatment in hospitals and training centers operated by DMHMRSAS, is being repealed and superceded by a regulation that establishes a single standard for community and facility, public and private human rights programs; addresses consumer and family concerns; and reflects current practice and terminology.